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Books on legal forms should be accessible to students, as well as certain of the standard forms of agreements which are now in common use in many lines of business.

Suggestions should be given the students for continuing the study of law after embarking upon a business career. They should be recommended to keep in touch with the current output of the United States Government Printing Office. Many of its publications deal more or less fully with legal matters of interest to business men, especially with contemporary state legislation on labor matters and the like. So also they should be told how useful it is to the business man to avail himself of the publications of such bodies as Bureaus of Legislative Information which now exist in a number of states, and also the reports issued by organizations such as the American Association for Labor Legislation. Indeed, it may not be too much to expect that business men, academically trained for their calling, will in increasing numbers feel convinced that it is really profitable for them to read not merely their trade papers and a general magazine of business, but also a law journal of the better class.

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#### DISCUSSION BY W. H. SPENCER

There has always been, to a greater or less extent, a feeling that the study of law should constitute a part of business education. Earlier, students were sent into law schools to pursue the study of certain designated subjects, or professors of law and lawyers were called in to deliver lectures on "business" or "commercial law." Later, schools of business began to add to their faculties instructors in law. At the present time, I believe that there is no school of business which does not have its own instructing staff and its own courses in law.

Without going into the historical details of this development, certain general comments on the teaching of law in collegiate schools of business can, I think, be safely made. (1) The persistency with which law has recurred in business-school curricula is strong evidence of the need of it as a part of business training. (2) The courses of study in law for schools of business have been, and still are, typically abbreviated and diluted law-school courses. (3) The presentation of the subject-matter has been, and still is, a more or less haphazard and mechanical performance. (4) The courses offered have not been worked out in terms of a coherent, logical program of business education.

In view of these statements it would seem that the time has come for a reconsideration and restatement of the place of law in collegiate schools of business. Do we have real, worth-while objectives toward which we are working, which will justify the retention of law in a business curriculum? Are we sure that we have chosen the most appropriate content for the attainment of our objectives? Is our content arranged most advantageously for reaching these objectives?

Before we can answer these questions it is necessary to ask and answer a still broader and more fundamental question: What, after all, are the

objectives toward which schools of business are working in general business education? I believe that two general statements can be made which will include and accurately describe the possible objectives of business education:

(1) A school of business may desire and attempt to give the student some grasp of the technical features of the business in which he is interested.

(2) It may attempt to give him a mastery of the principles of business administration. The technical features of a business curriculum will have to be worked out in terms of various businesses and will vary with them. To attempt to give all the technical instruction demanded by students would conceivably mean courses in all kinds of businesses, an undertaking, certainly impracticable, if not impossible. The principles of business administration are, however, fundamentally the same in all businesses. In view of these facts a school of business is justified in confining its activities, in the main, to instruction in the principles of business administration. In my opinion, therefore, a thorough presentation of the principles of business administration is the big objective toward which schools of business should be working.

Now at what conclusions do we arrive if we ask ourselves what ends we are working for in the teaching of law in a school of business? Do we really have any definite clear-cut objectives? If we have, do we reach them? Even if we have objectives and even if we reach them, are they worth the time and energy spent in doing so?

Speaking in general terms, the real purpose in teaching law to students of business is to bring them in contact with the larger problem of social control. Every business man should know, whether he likes it or not, that he must conduct his business according to the rules of the game. These rules of the game we collectively designate as social control. Now law is one of the most important instrumentalities of social control, and it is for this reason that students preparing for business should be given instruction in it.

But, more specifically, I am sure that we should neither hope nor attempt to train students in law so well that when they go out into business they can dispense with lawyers and legal services. A business man, for instance, should know something of accounting, not because he is going to be an accountant, but because he will not thoroughly understand his business without a knowledge of it. In other words, his knowledge of accounting is an aid to business administration. A business student should know some law, not because he is going to be a lawyer, but simply because he will not understand his relation to organized society without a knowledge of it. A knowledge of law is to the business man but an aid to administration.

Affirmatively, there are several specific objectives toward which we ought to be working in presenting courses in law to students of business.

(1) Certainly we may hope to introduce the student to the whole field of the law, to give him a working knowledge of legal phraseology, and to prepare him for the study of case material.

(2) We should assist him in visualizing more clearly the structure of modern industrial society by showing him the part which law and legal institutions have performed in the development

and maintenance of the structure. (3) Such courses should give the student a practical knowledge of the legal devices which business men use in the administration of their affairs. Some of these devices, without attempting to classify them here, are simple contracts, bailments, sales, negotiable instruments, and corporations. (4) We ought to give him an appreciation of certain portions of the law which very directly and very intimately throw around him the lines of social control. Of course, in the study of the legal advices to which reference has just been made, he is bound to sense in some degree his relation to organized society. But the objective I have in mind here will be sought primarily in the study of those rules of law which say to him, "You should or should not do certain things, and if you do what you should not, you will be forced to pay damages or you will be punished." To attain this objective, the student must be given some contact with the law of torts, the law of crimes, and regulative legislation. (5) Finally, it would seem not too much to hope that upon the completion of the course of study the student will have become fairly skilful in analyzing court decisions, in deducing the doctrines from cases, and in evaluating them.

If we can reach these objectives in the teaching of law in schools of business, our work will not have been in vain. I doubt very much whether at present we are reaching them. But I firmly believe that they can be reached by the proper choice, arrangement, and presentation of our legal content.

Three questions are involved in the problem of selecting the most suitable content for our law courses: (1) What subjects, according to orthodox legal classifications, should be included? (2) What portions of these subjects should be emphasized? (3) What character of material should be selected for the presentation of a given subject? In the present paper I shall attempt to answer only the first question.

The subjects which should be chosen can best be worked out in terms of some of the objectives which have been discussed in a previous connection. The first objective mentioned was that of giving the student an introduction to the study of law. This can be accomplished: (a) by selected readings on certain jurisprudential concepts, such as the nature, origin, and growth of law, systems of law, and classifications of law; (b) by a study of certain procedural concepts on the enforcement of rights; (c) and by a study of the principles and mechanics of the study of cases.

The next objective is to assist the student in gaining a clearer visualization of industrial society, by showing him the place which law and legal institutions occupy in its structure. Obviously enough, every subject studied will be to some extent instrumental in reaching this objective, for every subject in law will bear some relation to the structure of society. But more than this can and should be done. A direct and conscious effort to reach this objective should be made by a collection and organization of fundamental legal concepts from various subjects. Such a collection should include legal concepts on legal personality and capacity, consensual and non-consensual legal obligations social and business relations, and private property.

Another objective, which I mentioned in a previous connection, is that of acquainting the student with the various legal devices which a business man may use in the administration of his affairs. This will include certain organization devices: agencies, partnerships, and corporations; certain market devices: contracts, sales, pledges, bailments, and barters; certain financial devices: stocks, bonds, negotiable instruments, mortgages, and liens; and finally certain risk-bearing devices: speculative contracts and insurance contracts.

The final objective is that of bringing the student to finer appreciation of the direct relation which he bears to organized society. Of course, a study of the legal devices which I have just mentioned will do this in some degree. But primarily, it seems to me, the purpose of the study of these subjects is to show them as devices in the administration of a business. But there are certain subjects in our law, which, if included in this content, will give him a more direct and more intimate consciousness of his relation to the organized society in which he will carry on his business. The study of these subjects will assist him in administration, but the assistance will be primarily in indicating the limits within which he can formulate his business policies.

On the one hand we have a whole range of regulative legislation, telling the business man what he may do, what he may do under certain conditions, what he must or must not do. Somewhat similar to these peremptorily enunciated rules of conduct, we have our common law of wrongs. In working out these wrongs the courts have sought to formulate a series of duties which every member of society owes to every other member of society in respect to the latter's person, property, reputation, and social and economic relations. If I violate one of these duties intentionally, negligently, or sometimes even accidentally, the law calls the violation a tort and forces me to make compensation to the injured person. It may be that my violation is so serious in character, or accompanied by such a state of mind, that the law will say that the offense becomes a public as well as a personal wrong. In this event my wrongful act is called a crime, and I am punished appropriately.

I am not yet convinced in my own mind that we should attempt to teach any part of the law of crimes. But I do wish to emphasize the fact that certain fundamental legal concepts from it might serve most excellently in laying the foundations for the study of social control of business.

But I am convinced that certain fundamental tort actions must be imparted to the students in schools of business. In my opinion no other single subject is so pregnant with possibilities in teaching the business student his relation to organized society. For instance, certain tort notions are the starting-point for the discussion of most, if not all, questions of fair and unfair competition. Certain other tort notions are essential for any intelligent study of the legal aspects of industrial relations.

I also believe that, paralleling these subjects, there should be a course on the principles of modern business legislation. More and more there is a tendency toward legislative intervention in business. It is, therefore, highly important that a student, preparing for business, should get some knowledge

of the principles on which the government through legislation does intervene in business.

Assuming that we know the content which should be presented, is there any particular reason why we should worry about the order of its presentation? One may say that the really important fact is the content; that the arrangement is a more or less mechanical matter; and that for all practical purposes it is immaterial how the content is arranged for presentation. I suppose this would mean that we follow the traditional order of presentation, the order followed by law schools for law students.

With this view personally I cannot agree. I think that there is something more than mere mechanics in the arrangement of the content of a course. I think that from a good arrangement of the material something more may reasonably be expected than mere facilitation in its presentation. I believe that there is a real benefit of substance to be hoped for in, may I say, a scientific outline. This benefit of substance which may be hoped for is a viewpoint.

This viewpoint has been spoken of several times before, but it will do no harm to mention it again. Law to the lawyer is a weapon which he must sharpen and which he must be constantly whetting. In one case he may be called upon to defend a given principle; in the very next he will have to attack the principle. To him, therefore, analytical jurisprudence is the thing of prime importance. But to the business man, law is an aid to administration. It is a series of guideposts to assist him in directing his affairs. He may use it to aid himself in shaping and executing his business policies, but he will not use it for the purpose of extricating himself from difficulties. The arrangement of the content for the business student should, therefore, be primarily functional, in terms of his business problems, as far as possible.

It may be said in passing that sooner or later our law schools may come to the conclusion that there should be a change in emphasis from historical and analytical jurisprudence to what I may call, for the want of a better term, functional jurisprudence.

Whether the dominant force in the State is to be equality or inequality, or something intermediate, the great word throughout is Administration; for after all, the law, if not itself business, is at any rate a chief factor in relation to it, and must always be reckoned with in the conduct of affairs. The whole matter indeed may be summed up by saying that the great legal-business problem is, how to administer the pursuits of men in relation to the law. Administration should be the first and last word in legal education.<sup>1</sup>

The objective which the writer of this passage brings out seems eminently sound. One of the first and most important steps which the law schools can take in reaching this objective is to arrange the content of substantive law in terms of functions and relations.

It may be suggested that a functional treatment of law sounds well in theory, but that as a practical matter it cannot be worked out. It is contended that the task would necessitate a considerable shifting of material.

<sup>1</sup> Bigelow, *Centralization and the Law*, p. 18.

Admitting this to be the case, such a shifting is neither objectionable nor impossible. It is objected that a student, under such an arrangement, would be thrown pretty suddenly into the middle of an entirely new subject, which would presuppose a considerable acquaintance with legal phraseology and legal phenomena. I believe that a moment's reflection will show that the danger alluded to is more apparent than real. But even if it were a real and serious danger, it would be sufficiently guarded against by the arrangements which I have in mind.

Preceding the functional courses in law there should be what at present I choose to call a survey or scope course. The purpose of such a course will be, first, to introduce the student to the whole field of the law by giving him a certain background of jurisprudence, a working knowledge of how rights are enforced, and some appreciation of how to study cases; second, to show him the place which law occupies in the structure of modern industrial society by a study of fundamental legal concepts collected from various subjects. Incidentally, this scope course will give the student legal phraseology and tools which will enable him without difficulty to take up and study the functional courses which follow.

The courses which follow the survey or introductory course will be worked out in terms of the various relations or functions which seem typically characteristic of all businesses. (1) One course or chapter will deal with the law as it affects the business man's relation to the market. What are the legal devices which a business man may use in the administration of his market activities? What are the legal limitations upon the choice of his market policies and practices? (2) There will be a study of the legal problems involved in the administration of his finances. What devices are recognized by the law which will assist him in securing money or credit? What devices are available for securing his creditor? What are the rights of his creditors? (3) Another chapter will deal with the law relating to risk-bearing as a function in business. What devices has the law furnished the business man by which he may shift risks to someone else? Under what circumstances may he legally resort to them? (4) The next chapter will be a study of the law touching his relation to labor. How far will the law restrict him in the formulation of his labor policies? What practices are legal and what practices are illegal in the bargaining struggle between employer and employee? (5) The final chapter will deal with the law relating to the form of the business unit. What forms of business organization does the law recognize? How are they formed and dissolved? From a legal standpoint, what are the characteristics of these business organizations which make them useful to the business man?

In conclusion, it is my opinion that every business student should take, as a minimum in law, the course or courses which I have outlined. If the content of the course or courses is chosen and arranged in the manner indicated, I believe that the objectives which I mentioned earlier can be attained. These objectives, it seems to me, are an indispensable part of a training in business administration, which is after all the chief end of business education.